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13 Counterclaim-Defendant Leadership Studies, Inc.

14 **UNITED STATES DISTRICT COURT**

15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 LEADERSHIP STUDIES, INC., a  
17 California corporation,

18 Plaintiff,

19 v.

20 BLANCHARD TRAINING AND  
21 DEVELOPMENT, INC., a California  
22 corporation, and Does 1-10, inclusive,

23 Defendants.

24 BLANCHARD TRAINING AND  
25 DEVELOPMENT, INCORPORATED,

26 Counterclaim-Plaintiff,

27 v.

28 LEADERSHIP STUDIES, INC.,

Counterclaim-Defendant.

CASE NO. 15CV1831 WQH-KSC

**RESPONSE TO STATEMENT OF  
UNDISPUTED MATERIAL FACTS  
AND ADDITIONAL STATEMENT  
OF UNDISPUTED AND DISPUTED  
MATERIAL FACTS IN SUPPORT  
OF LEADERSHIP STUDIES'  
OPPOSITION TO BLANCHARD  
TRAINING'S MOTION FOR  
SUMMARY JUDGMENT ON  
CLAIM 7 FOR COPYRIGHT  
INFRINGEMENT BASED ON  
OWNERSHIP AND CHAIN-OF-  
TITLE**

[Filed Concurrently with Opposition to  
Motion for Summary Judgment]

Judge: Hon. William Q. Hayes

Date: May 1, 2017

**NO ORAL ARGUMENT UNLESS  
REQUESTED BY THE COURT**

**I. CORRESPONDING AMONG COUNSEL FOR BLANCHARD TRAINING AND LEADERSHIP STUDIES AND INTERROGATORY RESPONSES**

| Moving Party's<br>Undisputed Material Facts   | Supporting<br>Evidence   | Responding Party  |
|---|--|---|
| <p>1. Blanchard Training's counsel explained in detail in a letter dated December 20, 2016 the reasons that the copyright claim in the Third Amended Complaint would fail, including the gaps in the chain-of-title.</p>  | <p>Letter from S. Strauss dated December 20, 2016 attached as Exhibit A at 22. Declaration of John Paul Oleksiuk ("Oleksiuk Decl.") ¶ 3.</p> | <p>Disputed as to legal argument or conclusion that "that the copyright claim in the Third Amended Complaint would fail, including the gaps in the chain-of-title," but undisputed that the December 20, 2016 stated Blanchard Training's position on such matters.</p>   |
| <p>2. Leadership Studies' counsel conceded that the chain-of-title remained unclear over a year into litigation, as confirmed in a letter dated December 30, 2016 with the statement "Regarding copyright claims, we acknowledged the chain-of-title is still unclear."</p> | <p>Letter from J. Zuber dated December 30, 2016 attached as Exhibit B at 41. Oleksiuk Decl ¶ 4.</p>  | <p>Disputed as to the text within the quotation marks in this statement, which appears to be quoted both inaccurately, and out of context, but undisputed that December 30, 2016 letter stated, "Regarding the copyright claims, we acknowledged that the chain of title is not yet clear. We also confirmed that we cannot make any decision on the copyright claims until BTB confirms to us in writing that BTB has conducted a reasonable search and diligent inquiry, and has produced all responsive documents relevant to the chain of title issue or the sale of intellectual property rights. We especially emphasized the need to have all documents related to transfers of intellectual property where there was no itemized list of the actual properties transferred. <u>You said this request was reasonable and that you would consult internally and get back to us.</u>" Letter from J. Zuber dated December 30, 2016 attached as Exhibit B at 47. Oleksiuk Decl ¶ 4.</p> |

3. Leadership Studies identified one design and one questionnaire as the basis for its copyright claims in its Amended Response to Interrogatory No. 2 dated October 31, 2016. The design is the “4-quadrant/bell curve design known as the SITUATIONAL LEADERSHIP® Model” published in various works. The questionnaire is the Leadership Effectiveness and Adaptability Description (“LEAD”), registered in Reg. Nos. TXu01186155, TX0002108417, TX0001270250, and TX0001270251. The similarities in the scoring grids are the only specific examples provided by Leadership Studies in its interrogatory response comparing Leadership Studies’ LEAD scoring instrument with the accused work, Blanchard Training’s LBAll scoring instrument.

Plaintiff and Counterclaim Defendant Leadership Studies, Inc.’s Amended Responses to Interrogatory Nos. 1, 2, 3, 5, 6, 7, 8, 10, 12, 13, 14, 15, 17, and 18 of Defendant and Counter Claim Plaintiff Blanchard Training and Development, Incorporated’s First Set of Interrogatories dated October 31, 2016 (“10/31/16 Am. Rog. Resp.”).<sup>1</sup> Exhibit C at 59-66. Oleksiuk Decl ¶ 5.

Undisputed that “Leadership Studies identified one design and one questionnaire as the basis for its copyright claims in its Amended Response to Interrogatory No. 2 dated October 31, 2016[,]” but disputed in that Leadership Studies also identified one grading scale instrument in that same interrogatory.

Moreover, disputed that the “specific examples provided by Leadership Studies in its interrogatory response comparing Leadership Studies’ LEAD scoring instrument with the accused work, Blanchard Training’s LBAll scoring instrument” include *only* the similarities in the respective scoring grids; the interrogatory response also includes discussion of similarities in the displayed effectiveness graphs/gradients, and “(1) ways of tabulating and quantifying participant self-assessments (including calculations to measure leadership style (i) effectiveness and (ii) adaptability (note: LBAll uses the synonym ‘flexibility’); and (2) scales, marked out at ‘ruler’-like regular intervals (LEAD uses 6 intervals; LBAll uses 5), to visually display a leadership ‘Effectiveness’ gradient. Scoring for both LEAD and LBAll correlate directly to the leadership styles illustrated in their respective 4-quadrant graphic models.’)”

Disputed also as to footnote 1 statement that “The 10/31/16 amendment to the response to Interrogatory No. 2 is the most recent for that interrogatory. The 11/28/16 amendments to the responses to Interrogatories No. 5-7

| Moving Party's<br>Undisputed Material Facts  | Supporting<br>Evidence   | Responding Party   |
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|  |  | are the most recent for those interrogatories.” The most recent amendments to all of those interrogatory numbers were served on March 31, 2017, which Blanchard Training was advised about in the February 28, 2017 letter from Leadership Studies’ counsel. <i>See</i> Exhibits 8 and 10; Declaration of A. James Boyajian (“Boyajian Decl.”) ¶¶ 7 and 10.  |
| <p>4. In its Amended Responses to Interrogatories No. 5 dated November 28, 2016, Leadership Studies identified several works not mentioned in the Third Amended Complaint:</p> <p>The ASSERTED WORKS that form the basis of the copyright claims include [1] the early four quadrant diagram from the 1967 <i>Leader Behavior</i> article at BLANCHARD0002072 (“1967 WORK”), [2] the diagram with the first known bell curve in the 1969 <i>Life Cycle of Leadership</i> article at page 2 (“1969 WORK”), [3] the LASI questionnaire and grading scale from the 1974 <i>So You Want to Know Your Leadership Style?</i> Article at page 2</p> | <p>Plaintiff and Counterclaim Defendant Leadership Studies, Inc.’s Amended Responses to Interrogatory Nos. 1, 5, 6, 7, 12, and 18 of Defendant and Counter Claim Plaintiff Blanchard Training and Development, Incorporated’s First Set of Interrogatories dated November 28, 2016 (“11/28/16 Am. Rog. Resp.”). Exhibit D at</p> | <p>Undisputed that those works were identified in the Amended Responses to Interrogatories No. 5 dated November 28, 2016, that Amended Responses to Interrogatories No. 5-7 dated November 28, 2016 trace the evolution of certain original elements of the “four-quadrant bell-curve graphic” and “LEAD instrument” works, but disputed as to the remaining statement of alleged facts considering that CLS did identify, in the amended response to interrogatory No. 6 (see Exh. D. at p.112), a written assignment from Center for Leadership Studies and that these outdated interrogatory responses do not represent Leadership Studies’ more recently amended position as to the chain of title for the copyright protected works stated in in Leadership Studies’ February 28, 2017 letter and its March 31, 2017 amended interrogatory responses,</p> |

1 There were multiple amendments to many of Leadership Studies’ interrogatory responses as Leadership Studies continually revised its theory of its copyright claim. The 10/31/16 amendment to the response to Interrogatory No. 2 is the most recent for that interrogatory. The 11/28/16 amendments to the responses to Interrogatories No. 5-7 are the most recent for those interrogatories.

| Moving Party's<br>Undisputed Material Facts   | Supporting<br>Evidence                     | Responding Party  |
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| <p>(“1974 WORK”), [4] the diagram with the first known leadership descriptors along the bell curve (Telling, Selling, Participating, Delegating) and first known four-box “Maturity” scale below the four quadrants that appear in the 1977 third edition of <i>Management of Organizational Behavior</i> at CLS-00002178 (“1977 WORK”), and [5] the diagram that includes the “Readiness” scale in the 1984 book <i>The Situational Leader</i> at CLS-00003094 (“1984 WORK”).</p> <p>Leadership Studies<br/>Leadership Studies’<br/>Amended Responses to Interrogatories No. 5-7 dated November 28, 2016 trace the evolution of the allegedly original elements and clarifies that the “original elements” are in two categories: (1) the four steps (1967, 1969, 1977, and 1984) in the evolution of the “four-quadrant bell-curve graphic;” and (2) the LEAD instrument that was still known as LASI in 1974. The amended responses fail to identify a written assignment from Paul Hersey or his alleged sole proprietorship named Center for Leadership Studies in 1973 to the company Management Education &amp; Development,</p> | <p>107-115.<br/>Oleksiuk Decl<br/>¶ 6.</p> | <p>which do “identify a written assignment from Paul Hersey.” <i>See</i> Exhibits 8 and 10; Boyajian Decl. ¶¶ 7 and 10.</p> |



| Moving Party's<br>Undisputed Material Facts   | Supporting<br>Evidence | Responding Party |
|---|------------------------|------------------|
| Inc. which merged into the plaintiff Leadership Studies for either: (1) the LEAD (or LASI) copyright; and (2) the four-quadrant model shown in <i>Management of Organizational Behavior</i> (3d. Ed. 1977). |                        |                  |

## II. ORIGIN OF KEY COPYRIGHTED MATERIALS RELATING TO SITUATIONAL LEADERSHIP

| Moving Party's<br>Undisputed Material Facts   | Supporting<br>Evidence                         | Responding Party  |
|---|--|---|
| <p>5. Dr. Blanchard and Dr. Hersey collaborated and worked together to develop “a theory concerning a methodology for leaders to influence others based on their readiness for a particular task” which was named “Situational Leadership.”</p> | <p>Third Amended Complaint (“TAC”) ¶¶ 8-9.</p> | <p>Disputed in that this statement does not accurately state the allegations from the supporting evidence given in (“TAC”) ¶¶ 8-9; those allegations state as follows: “8. The founder of Leadership Studies, Dr. Hersey, developed a theory concerning a methodology for leaders to influence others based on their readiness for a particular task, which came to be known as “Situational Leadership.” Dr. Ken Blanchard worked with Dr. Hersey as Dr. Hersey developed his theory.” Dr. Kenneth Blanchard worked, and was associated, with Dr. Hersey in several capacities over the years, including as a student, a colleague, and a business partner, long before developing, through his company Blanchard Training, a derivative theory and methodology later on that called “Situational Leadership® II.” Declaration of Suzanne Hersey (“Hersey Decl.”) at ¶¶ 3, 6, and 7.</p> |
| <p>6. Starting back at the time they worked together at Ohio</p>  | <p>Paul Hersey and Kenneth</p>                 | <p>Undisputed except that “Situational Leadership” was not yet the name</p>   |

| Moving Party's<br>Undisputed Material Facts  | Supporting<br>Evidence   | Responding Party  |
|--|--|---|
| <p>University in the 1960s, Dr. Blanchard and Dr. Hersey coauthored numerous articles, "instruments and/or simulations," and several editions of the book <i>Management of Organizational Behavior</i> on the topic of Situational Leadership.</p> | <p>H. Blanchard, "Life Cycle Theory of Leadership," <i>Training and Development Journal</i>, May 1969. (BLANCHARD 0000340-348). Exhibit E at 121-130.</p> <p>March 24, 1997 Certificate of Registration RE 757-051 for <i>Management of Organizational Behavior</i> (1969) (BLANCHARD 0025412-13). Exhibit F at 131-133.</p> <p>April 5, 2001 Certificate of Registration RE 846-667 for <i>Management of Organizational Behavior</i> (2d. ed. 1972) (BLANCHARD 0025414-15). Exhibit G at 134-136.</p> <p>June 6, 2005</p> | <p>of the topic Dr. Hersey and Dr. Blanchard wrote about in the early co-authored works cited by the moving party as its supporting evidence.</p> |

| Moving Party's<br>Undisputed Material Facts | Supporting<br>Evidence  | Responding Party |
|---|---|------------------|
|   | <p>Certificate of Registration RE 917-721 for <i>Management of Organizational Behavior</i> (3d. ed. 1977) (BLANCHARD D0025416-17). Exhibit H at 137-139.</p> <p>March 28, 2017 Printout from U.S. Copyright Office website (copyright.gov) regarding January 15, 1982 Copyright Registration No. TX0000843213 for <i>Management of Organizational behavior: utilizing human resources</i> (4<sup>th</sup> ed. 1982) Exhibit I at 140-142.</p> <p>Excerpts from Paul Hersey and Kenneth H. Blanchard, <i>Management of</i></p> |                  |



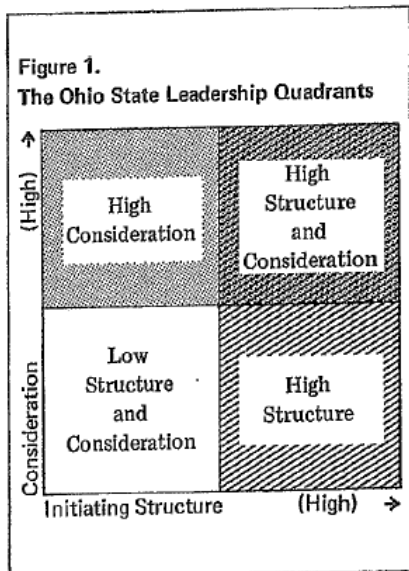
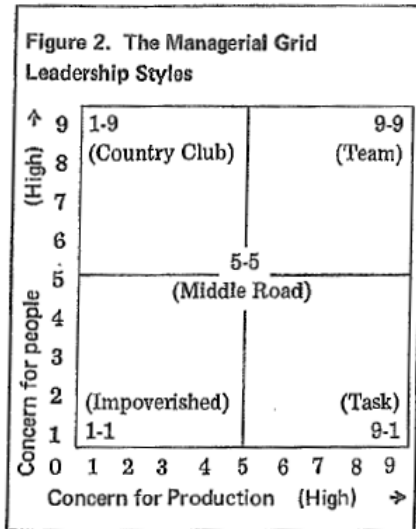
| Moving Party's<br>Undisputed Material Facts | Supporting<br>Evidence   | Responding Party |
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|   | <p data-bbox="743 306 966 709"><i>Organizational Behavior</i> (2d. ed. 1972) (cover, copyright page, page 142) (CLS-00015454-58, 15606). Exhibit J at 143-149.</p> <p data-bbox="743 730 966 1724">Excerpts from Paul Hersey and Kenneth H. Blanchard, <i>Management of Organizational Behavior</i> (3d. ed. 1977) (cover, copyright page, example pages referring to LEAD instrument and four-quadrant design) (CLS-00001986, 1993-94, 2093-2096, 2102-2105, 2111, 2114, 2117, 2178, 2234-2237). Exhibit K at 150-169.</p> <p data-bbox="743 1745 966 1923">Excerpts from Paul Hersey and Kenneth H. Blanchard, <i>Management</i></p> |                  |

| Moving Party's<br>Undisputed Material Facts | Supporting<br>Evidence  | Responding Party |
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|   | <p data-bbox="743 306 971 632"><i>of Organizational Behavior</i> (4th. ed. 1982) (cover, copyright page, page 152). Exhibit L at 170-173.</p> <p data-bbox="743 653 971 1356">1973 Leader Adaptability and Style Inventory (LASI) questionnaire bearing copyright notice "Copyright © 1973 Paul Hersey and Kenneth H. Blanchard." (BLANCHARD D0025346-0025355). Exhibit M at 174-184.</p> <p data-bbox="743 1377 971 1913">Paul Hersey and Kenneth H. Blanchard, "So You Want to Know Your Leadership Style?" <i>Training and Development Journal</i>, February 1974, BLANCHARD D0000570-585. Exhibit N</p> |                  |

| Moving Party's<br>Undisputed Material Facts   | Supporting<br>Evidence  | Responding Party   |
|---|---|--------------------|
|   | <p>at 185-201.</p> <p>Paul Hersey's 1975 Resume listing coauthored works. (OHIOU0000 008-12). Exhibit O at 202-207.</p> |                    |
| <p>7. The original copyright claimant for the 1969 work <i>Management of Organizational Behavior: Utilizing Human Resources</i> was Prentice-Hall, Inc. The renewal claimants for the current renewal registration are Paul Hersey and Kenneth H. Blanchard, claiming as authors.</p>           | <p>March 24, 1997 Certificate of Registration RE 757-051 (BLANCHARD 0025412-13). Exhibit F at 131-133.</p>              | <p>Undisputed.</p> |
| <p>8. The original copyright claimant for the 1972 work <i>Management of Organizational Behavior: Utilizing Human Resources</i> (2d. Ed.) was Prentice-Hall, Inc. The renewal claimants for the current renewal registration are Paul Hersey and Kenneth H. Blanchard, claiming as authors.</p> | <p>April 5, 2001 Certificate of Registration RE 846-667 (BLANCHARD 0025414-15). Exhibit G at 134-136.</p>               | <p>Undisputed.</p> |

| Moving Party's<br>Undisputed Material Facts   | Supporting<br>Evidence  | Responding Party   |
|---|---|--------------------|
| <p>9. The original copyright claimant for the 1977 work <i>Management of Organizational Behavior: Utilizing Human Resources</i> (3d. Ed.) was Prentice-Hall, Inc. The renewal claimants for the current renewal registration are Paul Hersey and Kenneth H. Blanchard, claiming as authors. The copyright registration in the Third Edition covers material revised and expanded from the Second Edition.</p> | <p>June 6, 2005 Certificate of Registration RE 917-721 (BLANCHARD0025416-17). Exhibit H at 137-139.</p> | <p>Undisputed.</p> |

10. Hersey and Blanchard recognized in their May 1969 article "Life Cycle Theory of Leadership" that the 4-quadrant models below were created and used by their predecessors:



Paul Hersey and Kenneth H. Blanchard, "Life Cycle Theory of Leadership," *Training and Development Journal*, May 1969.

(BLANCHARD D0000340-348). Exhibit E at 122-123.

Undisputed.

11. In 1973-1974, the LASI questionnaire was not yet renamed LEAD.

Excerpts from the LASI questionnaire bearing a copyright notice  
 “Copyright © 1973 Paul Hersey and Kenneth H. Blanchard”:

| COLUMN I<br>(Style Range)<br>Alternative Actions |     |     |     |     |       |
|--|-----|-----|-----|-----|-------|
|  | (1) | (2) | (3) | (4) |       |
| 1  | A   | C   | B   | D   |       |
| ALTERNATIVE ACTIONS                              |     |     |     |     |       |
|  | A   | B   | C   | D   |       |
| 1  | +2  | -1  | +1  | -2  |       |
| 2  | +2  | -2  | +1  | -1  |       |
| 3  | +1  | -1  | -2  | +2  |       |
| 4  | +1  | -2  | +2  | -1  |       |
| 5  | -2  | +1  | +2  | -1  |       |
| 6  | -1  | +1  | -2  | +2  |       |
| 7  | -2  | +2  | -1  | +1  |       |
| 8  | +2  | -1  | -2  | +1  |       |
| 9  | -2  | +1  | +2  | -1  |       |
| 10   | +1  | -2  | -1  | +2  |       |
| 11   | -2  | +2  | -1  | +1  |       |
| 12   | -1  | +2  | -2  | +1  |       |
| SUB-TOTAL  |     |     |     |     | TOTAL |

Table 2. Determining Style Adaptability

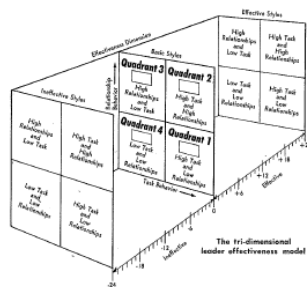


Figure 1. The Tri-Dimensional Leader Effectiveness Model

Nearly identical figures also appear in the earlier Paul Hersey and Kenneth H. Blanchard, “So You Want to Know Your Leadership Style?” *Training and Development Journal*, February 1974.

November 28, 2016

Amended Interrogatory Response No. 6 at 13, line 23. (“LEAD (formerly known as the Leader Adaptability and Style Inventory [LASI])

appeared early on as Paul Hersey and Kenneth H. Blanchard, *So You Want to Know Your Leadership Style?*, Training and Development Journal, February 1974.”) Exhibit D at 113.

Paul Hersey and Kenneth H. Blanchard, “So You Want to Know Your Leadership Style?” *Training and Development Journal*, February 1974, BLANCHARD D0000570-585 (still identifying the

Undisputed.



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questionnaire  
as LASI in  
1974). Exhibit  
N at 187.

LASI  
questionnaire  
bearing a  
copyright  
notice

“Copyright ©  
1973 Paul  
Hersey and  
Kenneth H.  
Blanchard.”

BLANCHARD  
D0025345-  
0025355.  
Exhibit M at  
175.

Paul Hersey’s  
1975 Resume  
repeatedly  
used LASI  
terminology,  
identifying the  
coauthors Paul  
Hersey and  
Kenneth H.  
Blanchard,  
and did not yet  
reflect any use  
of LEAD.  
(OHIOU0000  
008-12).  
Exhibit O at  
206.

Paul Hersey  
and Kenneth  
H. Blanchard,  
*Management  
of  
Organizational  
Behavior*,  
page 109 (3d.  
ed. 1977)

| Moving Party's<br>Undisputed Material Facts | Supporting<br>Evidence  | Responding Party |
|---|---|------------------|
|   | (explaining the<br>LEAD was<br>formerly<br>known as<br>LASI). (CLS-<br>00002117).<br>Exhibit K at<br>164. |                  |

**III. DR. BLANCHARD AND DR. HERSEY FORM SEPARATE COMPANIES**

| <b>Moving Party's<br/>Undisputed Material<br/>Facts</b>   | <b>Supporting<br/>Evidence</b>  | <b>Responding Party</b>  |
|---|---|--|
| <p><b>12.</b> In March 1976, Dr. Hersey incorporated his company Management Education and Development, Inc. in Ohio.</p>  | <p>Incorporating documents from Ohio Secretary of State. BLANCHARD00 00375-379. Exhibit P at 208-213.</p> | <p>Undisputed except that Dr. Hersey began using that name in business even though it was not formally incorporated until March 1976. <i>See</i> Hersey Decl. at ¶ 2.</p>  |
| <p><b>13.</b> “Dr. Blanchard decided he wanted to branch out on his own and provide management training through his company, Blanchard Training, [using] the concepts that he had worked on with Dr. Hersey.”</p> | <p>TAC ¶ 14.</p>  | <p>Undisputed, except that In 1981, Blanchard left the Center for Leadership Studies which paid him \$30,000 for its partnership interest minus certain expenses and “1981-82 license fees.” <i>See</i> Hersey Decl. at ¶ 7 and Exh. 4. Dr. Blanchard, through his own company Blanchard Training, initially licensed materials from the Center for Leadership Studies including “LEAD” materials and “colored charts” before creating its derivative model they called “Situational Leadership® II.” <i>Id.</i></p> |

| Moving Party's<br>Undisputed Material<br>Facts   | Supporting<br>Evidence   | Responding Party   |
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| <p>14. In October 1978, Dr. Blanchard incorporated Blanchard Training.</p>   | <p>California Secretary of State Records, Business Entity Detail for Blanchard Training and Development, Incorporated, available at <a href="https://businessse arch.sos.ca.gov/">https://businessse arch.sos.ca.gov/</a>, as well as filed-stamped public record articles of incorporation. Exhibit Q at 214-216.</p> | <p>Undisputed.</p>   |
| <p>15. In September 1979, Dr. Hersey incorporated another company—Leadership Studies Productions, Inc.—which has since changed its name and is the plaintiff in this lawsuit:</p> <ul style="list-style-type: none"> <li>• July 1985: Leadership Studies Productions, Inc. became Leadership Studies</li> <li>• June 2009: Leadership Studies became Leadership Studies, Inc. (the name of the plaintiff in this lawsuit)</li> </ul> | <p>CLS-15418-19 (articles of incorporation), CLS-00015414-15 (certificate of amendments of the articles of incorporation); CLS-00015416 (amended and restated articles). Exhibit R at 217-223.</p>   | <p>Undisputed except as to the suggestion that Leadership Studies Productions, Inc. “is the plaintiff in this lawsuit” since the plaintiff in this lawsuit is the merged product of two entities: Management Education and Development, Inc. which was merged into the later-incorporated California corporation “Leadership Studies” September 1985. <i>See</i> CLS-00005252-56. Exhibit S at 224 ¶2.</p> |

| Moving Party's<br>Undisputed Material<br>Facts  | Supporting<br>Evidence   | Responding Party   |
|---|--|--|
| <p>16. In 1985, Dr. Hersey merged Management Education and Development, Inc. into plaintiff Leadership Studies.</p>   | <p>11/28/16 Am. Rog. Resp. No. 5 at 9. Exhibit D at 106.</p> <p><i>See also</i> Agreement of Merger of Management, Education &amp; Development, Inc. into Leadership Studies. CLS-00005252-56. Exhibit S at 224-229.</p> | <p>Undisputed that Dr. Hersey merged Management Education and Development, Inc. into Leadership Studies, but disputed to the extent the word “plaintiff” refers solely to the entity formerly named Leadership Studies Productions, Inc. rather than the product of the two merged corporations. <i>See</i> CLS-00005252-56. Exhibit S at 224 ¶2 (“Disappearing Corporation shall be merged into Surviving corporation”).</p>  |
| <p>17. Thereafter, Dr. Hersey and Dr. Blanchard’s respective companies had a “long-standing close relationship” while each utilized its own model of Situational Leadership over the decades.</p> | <p>11/28/16 Am. Rog. Resp. No. 1 at 4. Exhibit D at 104.</p>   | <p>Undisputed that Dr. Hersey’s company Leadership Studies and Dr. Blanchard’s company Blanchard Training “had a ‘long-standing close relationship,’” but disputed as to the vague statement that “each utilized its own model of Situational Leadership over the decades” since the 1987 license agreement between the parties (the “1987 Agreement”) established once and for all that “Situational Leadership®” is owned by Leadership Studies, the plaintiff in this case, and licensed with certain restrictions to Blanchard Training, who thereupon utilized its own modified derivative version of the model which they called “Situational Leadership® II”. Hersey Decl. at ¶ 8 and Exh. 5.</p> |

| Moving Party's<br>Undisputed Material<br>Facts   | Supporting<br>Evidence   | Responding Party   |
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| <p>18. Leadership Studies registered "Center for Leadership Studies" as its fictitious name in 2009, as shown at <a href="https://arcc.sdcounty.ca.gov/Pages/Fictitious.aspx?FBNNu m=2009020396">https://arcc.sdcounty.ca.gov/Pages/Fictitious.aspx?FBNNu m=2009020396</a></p>                                     | <p>March 28, 2017 printout from San Diego County Clerk website (<a href="http://sdcounty.ca.gov">sdcounty.ca.gov</a>) , Exhibit T at 230-231.</p>  | <p>Undisputed.</p>   |
| <p>19. Following Dr. Hersey's passing in 2012, the relationship between the two companies changed. After Leadership Studies learned that Blanchard Training might be sold to a third party, Leadership studies rushed to file this lawsuit, asserting copyright claims over material dating back to the 1960s.</p> | <p>11/28/16 Am. Rog. Resp. No. 6-7 (tracing history of elements in the asserted works back to the 1960s). Exhibit D at 110-115.</p> <p><i>See generally</i> Complaint filed August 17, 2015. (Dkt. 1.) and TAC (indicating filing date of lawsuit after Dr. Hersey's December 18, 2012 death).</p> | <p>Disputed as to the vague and unsupported statements that "Following Dr. Hersey's passing in 2012, the relationship between the parties changed" and that "After Leadership Studies learned that Blanchard Training might be sold to a third party, Leadership studies rushed to file this lawsuit." Moving party provides no supporting evidence as to any of these general statements other than the filing date of the immediate lawsuit being approximately three and a half years after Dr. Hersey passed away.</p> <p>Moreover, Leadership Studies filed the present lawsuit to address Blanchard's material breaches of the 1987 Agreement, and and also to resolve related disputes regarding the intellectual properties and other rights of the parties, after receiving information that indicated Blanchard Training was trying to usurp the goodwill to the Situational Leadership® trademark in breach of that contract. Boyajian Decl. ¶ 3.</p> <p>Undisputed that the that instant lawsuit asserted "copyright claims over material dating back to the 1960s."</p> |



**IV. OTHER “CENTER FOR LEADERSHIP STUDIES” ENTITIES BESIDES THE PLAINTIFF LEADERSHIP STUDIES AND THE ALLEGED 1973 “SOLE PROPRIETORSHIP” OF DR. HERSEY’S**

| Moving Party’s Undisputed Material Facts   | Supporting Evidence   | Responding Party   |
|--|---|--|
| <p>20. Dr. Hersey’s 1975 resume obtained from Ohio University identifies the “Center for Leadership Studies” as part his academic experience at Ohio University, a center instituted at Ohio University in September 1967.</p> | <p>Paul Hersey’s 1975 Resume listing coauthored works. (OHIOU0000008-12). Exhibit O at 203.</p> | <p>Disputed to the extent Moving Party’s counsel has failed to provide proper basis for documents bearing Bates labels in the footer starting with “OHIOU”. Undisputed to the extent the purported resume of Dr. Hersey’s resume appearing in Blanchard Training’s Statement of Undisputed Facts (“SUMF”) at Exhibit O states “Paul Hersey Resume – 1975 . . . Director, Center for Leadership Studies. The Center for Leadership Studies was instituted in September 1967[.]”</p> |

| Moving Party's<br>Undisputed Material<br>Facts   | Supporting<br>Evidence  | Responding Party  |
|--|---|---|
| <p>21. Ohio University archives also contain documents mentioning Dr. Blanchard by name in connection with an organization named "<i>The Ohio Center for Leadership Studies</i>" existing as a part of the Honors College at Ohio University in Fall 1968, which legally separated from Ohio University and incorporated as a private non-profit foundation using a campus address in February 1969.</p> | <p>Documents from Ohio University online archives, BLANCHARD0000302, 328-329. Exhibit U at 232-236.</p> <p>Ohio Secretary of State records regarding the Ohio non-profit foundation. BLANCHARD0025221-25. Exhibit V at 237-234.</p> | <p>Disputed to the extent Moving Party's counsel has failed to provide proper basis for documents bearing Bates labels in the footer starting with "OHIOU".</p> <p>Undisputed except to the extent this implies the name "The Ohio Center for Leadership Studies" was used after September 1976 by that separate non-profit entity because the secretary of state records indicate that entity officially changed its name to "The Foundation for Leadership Studies" in September 1976. <i>See</i> BLANCHARD0025221-25. Exhibit V at 242 and 244 ("The Foundation for Leadership Studies Formerly the Ohio Center for Leadership Studies."). There is no evidence presented to show that this was the same "Center for Leadership Studies" organization or entity that Dr. Hersey was involved with at Ohio University, Leadership Studies requests the Court make no such inference that the two are the same or even related entities.</p> |

| Moving Party's<br>Undisputed Material<br>Facts   | Supporting<br>Evidence  | Responding Party  |
|--|---|---|
| <p>22. On March 13, 1977, a general partnership comprised of <i>four individuals</i> (Dr. Paul Hersey, Suzanne Hersey, Dr. Kenneth Blanchard, Dr. William Hauser) filed a fictitious name statement for "Center for Leadership Studies Calif. Amer. U." in San Diego County.</p> | <p>Fictitious Business Name Statement, CLS-00005543-44. Exhibit W at 245-247.</p> | <p>Undisputed, except disputed that the proof of publication for the fictitious business name technically spells out the name without abbreviation: "Center for Leadership Studies California American University".</p> |

| Moving Party's<br>Undisputed Material<br>Facts  | Supporting<br>Evidence   | Responding Party   |
|---|--|--|
| <p>23. On or about January 1, 1979, a different partnership among <i>three companies</i> (Management, Education &amp; Development, Inc.; Blanchard Training and Development, Incorporated; and Keilty Incorporated) entered into an agreement to form a partnership that they also called Center for Leadership Studies. On March 12, 1979, that new partnership comprised of companies completed a fictitious name filing for Center for Leadership Studies in San Diego County. That new Center for Leadership Studies entered into a First Amended Partnership Agreement on or about November 7, 1980.</p> | <p>11/28/16 Am. Rog. Resp. No. 5 at 9 (Exhibit D at 109) identifying:</p> <ul style="list-style-type: none"> <li>1/1/1979 partnership agreement BLANCHARD 0000407-423)<sup>2</sup> Exhibit X at 248-265.</li> <li>3/12/1979 fictitious name filing for the general partnership (CLS-00009915) Exhibit Y at 266-269.</li> <li>11/7/1980 First Amended Partnership Agreement (CLS-00005451)<sup>3</sup> Exhibit Z at 270-296.</li> </ul> | <p>Undisputed except to the extent that “Exhibit X,” as attached to Blanchard Training’s SUMF, purports to be an authenticable record of the partnership agreement because that document is neither signed nor is it supported by any request for judicial notice or any declaration that it is a true and correct copy of a document purporting to be the “1/1/1979 partnership agreement” between the three named companies.</p> |

<sup>2</sup> Blanchard hereby removes the “confidential” designation for this document being filed publicly.

<sup>3</sup> This document was produced by Blanchard Training from its records as BLANCHARD0000431-456. Blanchard’s version is attached here in Exhibit Z and Blanchard hereby removes the “confidential” designation for this document being filed publicly.

**V. COPYRIGHT REGISTRATIONS FOR LEAD IDENTIFIED BY LEADERSHIP STUDIES**

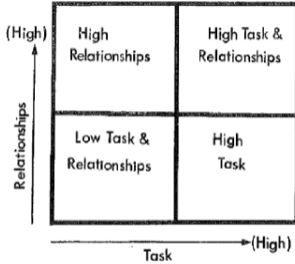
| Moving Party's<br>Undisputed Material<br>Facts  | Supporting<br>Evidence   | Responding Party  |
|---|--|---|
| <p><b>24.</b> The only copyright registration corresponding with the LEAD questionnaire pled in the Third Amended Complaint is Registration No. TXu 186-155.</p>  | <p>TAC ¶ 164.</p>  | <p>Undisputed except to the extent this implies Leadership Studies is barred from introducing additional copyright registrations for works containing the LEAD questionnaire.</p> |
| <p><b>25.</b> The work deposited in 1985 with an application to obtain copyright Registration No. TXu 186-155 contained a copyright notice as follows: "© Copyright 1977 Paul Hersey, Kenneth H. Blanchard, Ronald K. Hambleton. All Rights Reserved." In the application resulting in Registration No. TXu 186-155, counsel for Leadership Studies' predecessor stated 8 years after publication that "[t]he work was created by the individuals whose names appear in the copyright notice with the intent and understanding that Management and Educational Development, Inc. would own the work."</p> | <p>Copyright Registration No. TXu 186-155. CLS-00006550-53. Exhibit AA at 300.</p> | <p>Undisputed.</p>  |

| Moving Party's<br>Undisputed Material<br>Facts  | Supporting<br>Evidence  | Responding Party  |
|---|---|---|
| <p>26. Leadership Studies expanded from one LEAD registration number in the Third Amended Complaint to four registration numbers for LEAD in its interrogatory responses: "Reg. Nos. TXu000186155 [alternative format to TXu 186-155], TX0002108417, TX0001270250, TX0001270251."</p> | <p>See Leadership Studies' Amended Response to Interrogatory No. 2, dated October 31, 2016 (page 9). Exhibit C at 63.</p> | <p>Undisputed except to the extent Blanchard Training implies there is anything improper with this course of events under the Federal Rules of Civil Procedure's notice pleading and discovery rules.</p> |

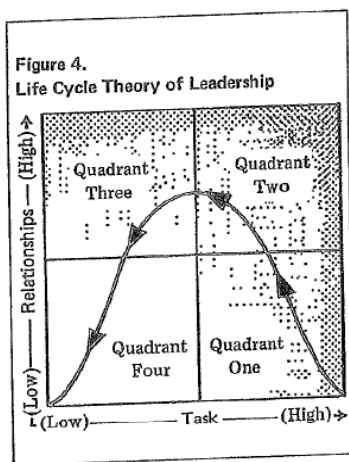


| Moving Party's<br>Undisputed Material<br>Facts  | Supporting<br>Evidence   | Responding Party  |
|---|--|---|
| <p>27. The registration certificate TX0002108417 explicitly covers only a new and revised selection and arrangement, and it was registered in 1987 for a work allegedly published in 1973. The certificate acknowledges preexisting material not included in the claim: "Chart on page 2 appeared in somewhat different form in Management of Organizational Behavior by Paul Hersey and Kenneth H. Blanchard, Prentice-Hall, 1969, 1972." The new material added to the work in which the copyright is claimed: "New and revised selection and arrangement of text and visual elements."</p> | <p>Copyright Registration No. TX 2-108-417. CLS-00000682-683. Exhibit BB at 301-303.</p> | <p>Undisputed, except to the extent that nowhere in that Certificate of Copyright Registration, No. TX 2-108-417, claiming "Selection and arrangement of text and visual elements" does it also claim to be for "a work allegedly published in 1973."</p> |
| <p>28. The registration certificate TX0001270250 covers Lead Matrix profile allegedly created in 1983, so it does not cover material created earlier.</p>   | <p>CLS-00006410-6411. Exhibit CC at 304-306.</p>   | <p>Undisputed.</p>  |
| <p>29. The registration certificate TX0001270251 covers Lead Matrix allegedly created in 1983, so it does not cover material created earlier.</p>   | <p>CLS-00000566-567. Exhibit DD at 307-309.</p>  | <p>Undisputed.</p>  |

## VI. FOUR-QUADRANT BELL CURVE GRAPHICS

| Moving Party's<br>Undisputed Material<br>Facts   | Supporting<br>Evidence   | Responding Party  |
|--|--|---|
| <p>30. Leadership Studies identifies this four-quadrant design in the 1967 work <i>Leader Behavior</i> bearing a copyright notice "Copyright © 1967 by Management Education &amp; Development, Inc." as the "Earliest Known" Version of 4-quadrants that is the basis of the claim of ownership of an original work:</p>  <p>Figure 2.1 Basic Leader Behavior Styles</p> | <p>11/28/16 Am. Rog. Resp. No. 6 at 10-11. Exhibit D at 106.</p> | <p>Undisputed to the extent that Leadership Studies had identified this four-quadrant diagram, particularly in light of its original literal elements "Task" and "Relationship," in an earlier amended interrogatory response as the "Earliest Known" version of a four quadrants diagram appearing in any article authored by Dr. Hersey and/or Dr. Blanchard based on the documents produced in discovery thus far.</p> |

31. Leadership Studies identifies this four-quadrant design in the 1969 work *Life Cycle Theory of Leadership* published in *Training and development Journal*, May 1969, as the first known version of 4-quadrants with a bell curve:



The copyright notice for this work is “Copyright 1969 American Society for Training and Development, Inc.” The authors are identified on the article as Ken Blanchard and Paul Hersey. Leadership Studies’ 11/28/16 Am. Rog. Resp. omit any assignment of the copyright interest in this article. Leadership Studies does not own this article.

11/28/16 Am. Rog. Resp. No. 6 at 11. Exhibit D at 106 and 111.

11/28/16 Am. Rog. Resp. No. 7 at 15 (identifying copyright notice). Exhibit D at 115.

Article containing image and identifying authors as Ken Blanchard and Paul Hersey. BLANCHARD000340-343. Exhibit E at 121-130.

Undisputed, except that the copyright notice “Copyright 1969 American Society for Training and Development, Inc.” is not for *Life Cycle Theory of Leadership* in particular but rather for the entire collective work – *i.e.*, the periodical’s May 1969 issue, within which *Life Cycle Theory of Leadership* is published as one of a number of separate and independent works contributions by different authors – and except that “Leadership Studies does not own this article” is not a fact but a legal argument and conclusion for which moving party posits no supporting evidence.

32. The more “notable and recognizable elements next appeared in the 1977 WORK” (the third edition of the book *Management of Organizational Behavior*), with the labeling of style descriptions in the quadrants of the bell curve and placement of a rectangular scale immediately below the square containing the 4-quadrants.

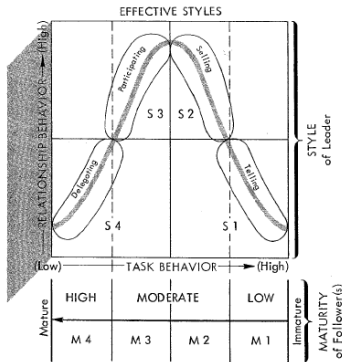


Figure 7.6 Style descriptions.

Leadership Studies does not own this book.

11/28/16 Am. Rog. Resp. No. 6 at 12. Exhibit D at 112.

Four-quadrant bell curve graphic in *Management of Organizational Behavior* (3d. Ed. 1977), CLS-00002178. Exhibit K at 165.

Disputed because “The more notable and recognizable elements [of the four-quadrant bell curve diagram that gives basis to the plaintiff’s copyright infringement claim] next appeared” in the 1975 dissertation authored solely by Dr. Paul Hersey (the “1975 Dissertation”), a copy of which was located and produced in this case on December 13, 2016 (approx. 3.5 months before the instant Motion for Summary Judgment was filed) and as discussed in Leadership Studies’ counsel’s February 28, 2017 letter:

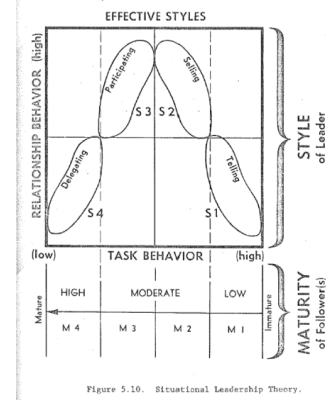
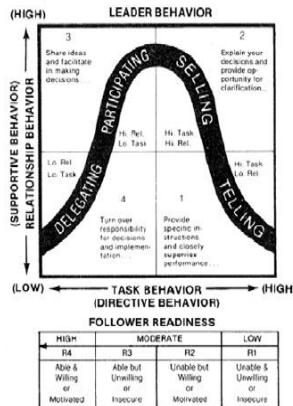


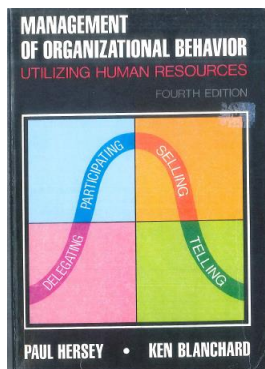
Figure 5.10. Situational Leadership Theory.

The earlier interrogatory responses served on November 28, 2016, attributing those elements to the 1977 book rather than the 1975 Dissertation was amended and superseded by the Amended Responses served on March 31, 2017 (as mentioned in the February 28, 2017 letter). See Exhibits 8 and 10; Boyajian Decl. ¶¶ 7 and 10. Additionally, this is disputed as to the legal argument and conclusion, “Leadership Studies does not own this book” for which there is no supporting evidence offered.

33. Leadership Studies next traced the development of the four-quadrant bell curve graphic from the 1977 Third Edition of *Management of Organizational Behavior* to Dr. Paul Hersey's 1984 book *The Situational Leader*:



Along the way, Leadership Studies *omitted* any reference to several interim versions of the four-quadrant diagram, including the image as it appeared in the 1982 Fourth Edition of *Management of Organization Behavior* which is *not* owned by Leadership Studies



11/28/16 Am. Rog. Resp. No. 6 at 12-13. Exhibit D at 112-113.

Excerpts from Paul Hersey and Kenneth H. Blanchard, *Management of Organizational Behavior* (4th. ed. 1982) (cover, copyright page, page 152). Exhibit L at 170-173.

January 15, 1982 Copyright Registration No. TX0000843213 for *Management of Organizational behavior: utilizing human resources* (4<sup>th</sup> ed. 1982) (current copyright claimant is Prentice-Hall, Inc.) Exhibit I at 140-142.

Undisputed that in its earlier discovery responses, "Leadership Studies next traced the development of the four-quadrant bell curve graphic from the 1977 Third Edition of *Management of Organizational Behavior* to Dr. Paul Hersey's 1984 book *The Situational Leader*" and that the 1982 fourth edition of *Management of Organizational Behavior* was also not discussed, but disputed in that Leadership Studies' counsel's February 28, 2017 letter and March 31, 2017 Amended Responses clarified that the original four-quadrant bell curve graphic elements forming the basis of its copyright claim are traced back to the 1975 Dissertation:

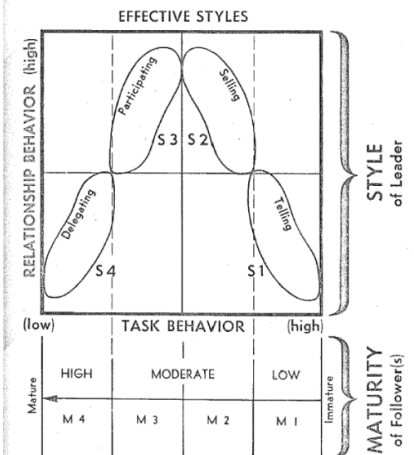


Figure 5.10. Situational Leadership Theory.

See Exhibits 8 and 10; Boyajian Decl. ¶¶ 7 and 10.

Cover of *Management of Organizational behavior: utilizing human resources* (4<sup>th</sup> ed. 1982)

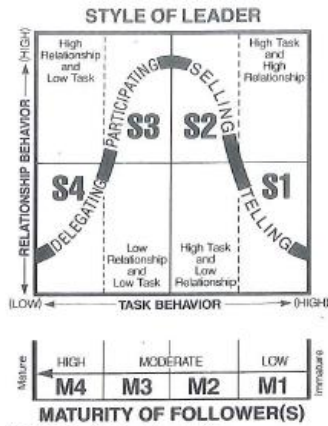


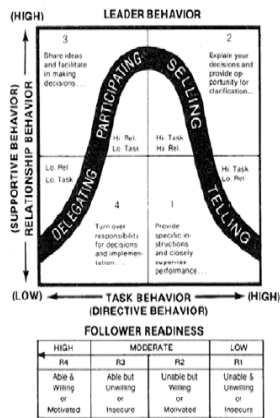
Image from page 152 of *Management of Organizational behavior: utilizing human resources* (4<sup>th</sup> ed. 1982).

**Leadership Studies does not own this work, and it predates *The Situational Leader* (1984).**



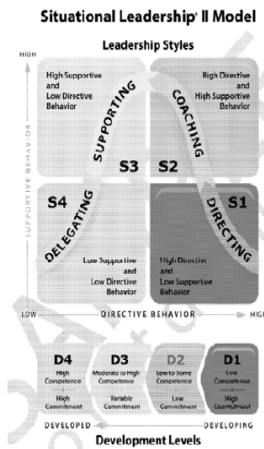
34. The comparison in Leadership Studies verified interrogatory responses explaining the basis for its copyright claim on the four-quadrant model:

CLS' SITUATIONAL LEADERSHIP® Model, earlier version from *The Situational Leader* (CLS ©1984) p.61 [CLS-00003092]



10/31/16 Am. Rog. Resp. No. 2 at 8. Exhibit C at 68.

Blanchard Training's "SITUATIONAL LEADERSHIP® II" derivative model depicted in brochure / sample workbook *Situational Leadership® II Experience* [CLS-00001569]



Undisputed that this explanation appears in Leadership Studies' earlier discovery responses served on 10/31/16, but disputed that this reflects Leadership Studies' position. As amended and explained in both the February 28 Letter and the Amended Responses (*see* Exhibits 8 and 10; Boyajian Decl. ¶¶ 7 and 10), Leadership Studies made it clear that it is limiting its copyright infringement claim to those certain proprietary elements that were first published in the 1975 Dissertation.

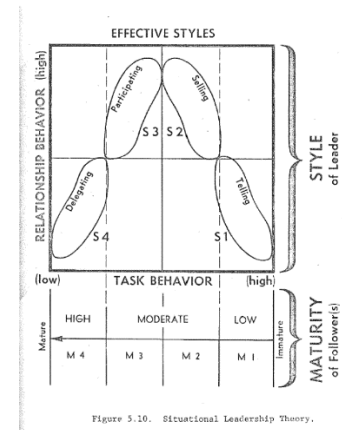


Figure 3.10. Situational Leadership Theory.

*See, e.g.,* at Exhibit 8 at p. 2; Boyajian Decl. ¶ 7.

The same original elements from this 1975 work appear again in other post-1975 works owned by Leadership Studies including *The Situational Leader* (1984) as displayed in the left column.

**VII. RESPONDING PARTY LEADERSHIP STUDIES' UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE**

| <b>Responding Party's Undisputed Material Facts</b>  | <b>Supporting Evidence</b>   | <b>Moving Party's Reply</b> |
|--|--|-----------------------------|
| <b>35.</b> The parties started written discovery in August 2016 and have since exchanged several sets of Interrogatories, Requests for Admission, and Requests for Production.   | Declaration of A. James Boyajian ("Boyajian Decl.") ¶ 3.   |                             |
| <b>36.</b> To date, Blanchard Training has not confirmed in writing that it "[h]as conducted a reasonable search and diligent inquiry, and has produced all responsive documents relevant to the chain of title issue or the sale of intellectual property rights." as requested in Leadership Studies counsel's December 30, 2016 letter. | Letter from J. Zuber dated December 30, 2016 attached as Exhibit B at 47. Oleksiuk Decl ¶ 4; Boyajian Decl. ¶ 4.   |                             |
| <b>37.</b> On February 28, 2017, Blanchard Training's counsel received Leadership Studies counsel's letter dated February 28, 2017.  | Letter from J. Zuber dated February 28, 2017 attached as Exhibit 8. Emails between counsel dated March 30, 2017 to April 4, 2017, attached as Exhibit 2. Boyajian Decl. ¶¶ 6-7 |                             |

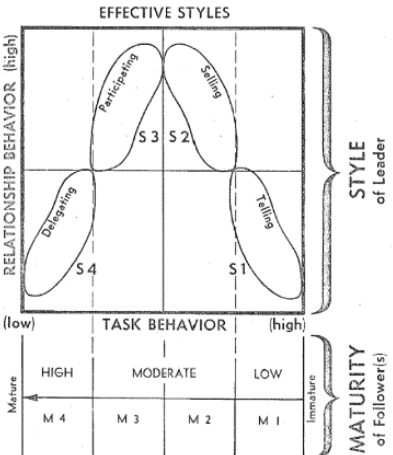
| Responding Party's<br>Undisputed Material Facts   | Supporting<br>Evidence  | Moving Party's Reply |
|---|---|----------------------|
| <p>38. The February 28, 2017 letter stated that Leadership Studies is no longer pursuing its copyright infringement claim on the basis of the LEAD.</p>   | <p>Letter from J. Zuber dated February 28, 2017 attached as Exhibit 1. Emails between counsel dated March 30, 2017 to April 4, 2017, attached as Exhibit 2. Boyajian Decl. ¶¶ 6-7</p> |                      |
| <p>39. The February 28, 2017 letter also explained that Leadership Studies has a clear chain of title to the original elements of the four-quadrant bell curve diagram from the 1975 Dissertation (the "1975 Work") and that Leadership Studies "intends to pursue its copyright claim concerning the 1975 Work unless BTD can provide substantial evidence that BTD has some right to exploit the protected elements. . . . CLS is willing to provide BTD assurances that the copyright claims in this Action will be limited to the 1975 Work."</p> | <p>Letter from J. Zuber dated February 28, 2017 attached as Exhibit 1. Boyajian Decl. ¶ 6.</p>  |                      |

| Responding Party's<br>Undisputed Material Facts  | Supporting<br>Evidence   | Moving Party's Reply |
|--|--|----------------------|
| <p>40. The February 28, 2017 letter alerted Blanchard Training that Leadership Studies will therefore be amending its interrogatory responses: “Note that CLS will be serving supplemental interrogatory responses considering the 1975 Work is the actual copyrighted work containing the original elements, not the 1977 work identified in the current amended responses. However, the elements protected remain exactly the same. Additionally, a copy of the entire 1975 Dissertation—of which Dr. Hersey was the sole author—was recently located and produced by CLS to BTD. See CLS-00015986.”</p> | <p>Letter from J. Zuber dated February 28, 2017 attached as Exhibit 1. Boyajian Decl. ¶ 6.</p> |                      |

| Responding Party's<br>Undisputed Material Facts  | Supporting<br>Evidence  | Moving Party's Reply |
|--|---|----------------------|
| <p>41. After receiving the February 28 letter, Blanchard never indicated that its written representation was insufficient to resolve the matters now at issue in its MSJ.</p> <p>Upon receiving service of the moving papers on March 29, 2017, Leadership Studies' counsel promptly alerted Blanchard Training's counsel about these issues via email, inquiring whether the MSJ had inadvertently overlooked Leadership Studies' position as was explained in the February 28 Letter. However, Blanchard Training's counsel confirmed that they did receive our February 28 Letter, and represented that the MSJ would not be withdrawn. Since the MSJ ignored the February 28 Letter entirely, this was the first time that Blanchard Training had ever communicated to Leadership Studies that the representations in the February 28 Letter, narrowing the copyright claim to the single 1975 Work, was somehow not sufficient.</p> | <p>Boyajian Decl. ¶¶ 8-9 and chain of email correspondence between the parties' counsel, at Exh. 9.</p> |                      |

| Responding Party's<br>Undisputed Material Facts   | Supporting<br>Evidence   | Moving Party's Reply |
|---|--|----------------------|
| <p><b>42.</b> Dr. Hersey earned his Doctorate of Education from the University of Massachusetts, Amherst, based on his 1975 Dissertation entitled: "SITUATIONAL LEADERSHIP: Some Aspects of Its Influence on Organizational Development." Leadership Studies had located and produced Dr. Hersey's 1975 Dissertation to Blanchard on December 13, 2016 – <i>i.e.</i>, approximately 3.5 months before Blanchard Training filed its motion for summary judgment on March 29, 2017.</p> | <p>Hersey Decl. ¶ 4; Boyajian Decl. ¶ 4.</p>   |                      |
| <p><b>43.</b> Leadership Studies is the sole registered owner of the copyright for the 1975 Dissertation given that this work was (1) originally registered with the U.S. Copyright Office in the name of "Paul Hersey" (Reg. No. A768223) in August 1976, (2) assigned by Dr. Hersey to Leadership Studies in June 1987, and (3) never assigned by Leadership Studies to any other person.</p>   | <p>U.S. Copyright Registration No. A768223 registration and assignment records at Exhibits 2 &amp; 34; Hersey Decl. ¶ 2.</p> |                      |

4 Leadership Studies hereby removes the "confidential" designation for these documents being filed publicly.

| Responding Party's Undisputed Material Facts   | Supporting Evidence  | Moving Party's Reply |
|--|--|----------------------|
| <p>44. The 1975 Dissertation is the first published work that included each of the three following elements: (i) the bell curve is raised above the X-axis so that it does not touch the X axis; (ii) the boxes below were expanded from three to four different "Maturity of Follower(s)," and (iii) the style descriptors (<i>i.e.</i>, "Telling" / "Selling" / "Participating" / "Delegating") are inscribed <i>inside</i> the parabolic bell curve rather than along the outside of a parabolic line (the "New Elements."):</p>  <p>Figure 5.10. Situational Leadership Theory.</p> | <p>Four-quadrant bell curve graphic in 1975 Dissertation, CLS-00015986 and CLS-00016202. Exhibit 1; Hersey Decl. ¶4.</p> |                      |



| Responding Party's<br>Undisputed Material Facts  | Supporting<br>Evidence  | Moving Party's Reply |
|--|---|----------------------|
| <p>45. The four-quadrant bell curve model appearing in the 1977 work <i>Management of Organizational Behavior</i> (third edition) includes all of the New Elements that first appear in the four-quadrant bell curve diagram in the 1975 Dissertation, and Leadership Studies owns the distinctive New Elements despite their inclusion in the 1977 work and other books and other materials published after 1975.</p> | <p><i>Compare</i> Four-quadrant bell curve graphic in <i>Management of Organizational Behavior</i> (3d. Ed. 1977), CLS-00002178. SUMF Exhibit K at 165 with earlier four-quadrant bell curve graphic in 1975 Dissertation, CLS-00016202. Exhibit 1; Hersey Decl. ¶4.</p>  |                      |
| <p>46. Blanchard Training developed its “Situational Leadership® II” after the 1975 Dissertation and uses the New Elements, or substantially similar versions based on the New Elements, as part of its four-quadrant bell curve model.</p>  | <p><i>Compare</i> “Situational Leadership ®II Model” diagram at verified amended interrogatory response to Interrogatory No. 2, at Exhibit 10 p. 4; Boyajian Decl. at ¶ 10 with the earlier four-quadrant bell curve graphic that appears in the 1975 Dissertation, CLS-00015986 and CLS-00016202; <i>Id.</i></p> |                      |

| Responding Party's<br>Undisputed Material Facts   | Supporting<br>Evidence   | Moving Party's Reply |
|---|--|----------------------|
| <p>47. Since the February 28 Letter, Blanchard Training has produced four more sets of documents in discovery, totaling 4,746 documents with 26,148 pages; 6,559 pages of which were served on March 31, 2017 (<i>i.e.</i>, 2 days after Blanchard Training filed the MSJ) and another 6,228 of which were served on April 14, 2017 (<i>i.e.</i>, the Friday before the Monday-deadline of Leadership Studies' opposition). These production sets contain documents that are relevant to the chain of title that is the subject of the MSJ.</p> | <p>Blanchard Training's transmittal letters served along with its past four production sets dated March 3, 14, 31, and April 14 at Exhibit 11. Boyajian Decl. ¶¶ 11.</p> |                      |
| <p>48. Blanchard Training continues to use and sell materials that copy the original elements that first appeared in the 1975 Dissertation work owned by Leadership Studies.</p>  | <p>Boyajian Decl. ¶ 10 and Exh 10 at Amended Resp. to Interrogatory No. 2.</p>   |                      |

**VIII. RESPONDING PARTY LEADERSHIP STUDIES' DISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE**

| <b>Responding Party's Disputed Material Facts</b>   | <b>Supporting Evidence</b>                                | <b>Moving Party's Reply</b> |
|---|---|-----------------------------|
| <b>49.</b> According to the 1987 Agreement, Dr. Blanchard was a partner in a partnership called the Center for Leadership Studies in his individual capacity: "Ken Blanchard [was] a partner in the [Center for Leadership Studies] but sold his partnership in 1979 when he formed Blanchard Training & Development, Inc." | 1987 Agreement at Exhibit 5 p. 310; Hersey Decl. ¶ 8.     |                             |
| <b>50.</b> The 1987 Agreement served as a copyright license for the use of the four-quadrant bell curve diagram in a non-"trademark sense" in addition to being a trademark license for use of the "Situational Leadership®" mark.  | 1987 Agreement at Exhibit 5 p. 310-311; Hersey Decl. ¶ 8. |                             |
| <b>51.</b> The 1987 Agreement was terminated based on Leadership Counsel's letter dated September 30, 2015.   | Answer to Third Am. Compl., D.E.52 at ¶ 55.               |                             |

1 **52.** Blanchard Training has  
 2 previously admitted that  
 3 Situational Leadership®  
 4 belongs to Paul Hersey and  
 5 the Center for Leadership  
 6 Studies, the latter's  
 7 copyrights of which were  
 8 ultimately acquired by  
 9 plaintiff Leadership Studies,  
 10 and that "BLANCHARD  
 11 hereby acknowledges  
 12 ownership by LEADERSHIP  
 13 STUDIES of the marks  
 14 'Situational Leadership' and  
 15 the rectangular four-quadrant  
 16 logo[.]"

Dr. Blanchard  
 letter dated  
 Sept. 25, 1995,  
 CLS-00000785-  
 786 at Exhibit 6  
 p. 317.<sup>5</sup> Hersey  
 Decl. ¶ 9; 1987  
 Exhibit 5 p.  
 310-311;  
 Hersey Decl.  
 ¶ 4.

11 **53.** Pearson Education, the  
 12 publisher of Dr. Hersey and  
 13 Dr. Blanchard's textbook  
 14 Management of  
 15 Organizational Behavior,  
 16 licensed from and attributes  
 17 copyright ownership solely  
 18 to Leadership Studies for all  
 19 four-quadrant bell curve  
 20 diagrams appearing in recent  
 21 editions of that textbook.  
 22 [See, e.g., Excerpts from the  
 23 10th Edition of MOB,  
 24 Hersey Decl. at 10 and Exh.  
 25 7.]

Excerpts from  
*Management of  
 Organizational  
 Behavior*,  
 Hersey Decl. ¶  
 10 and Exh. 7.

26  
 27 <sup>5</sup> Leadership Studies hereby removes the "confidential" designation for these  
 28 documents being filed publicly.

1 **54.** Leadership Studies did  
 2 not take a shotgun approach  
 3 to litigation. It made every  
 4 decision with careful  
 5 consideration of the  
 6 evidence. The issue has  
 7 been decades in the making,  
 8 Dr. Hersey, tragically passed  
 9 before the latest dispute  
 commenced. Leadership  
 Studies has collected and  
 analyzed this record without  
 his input, and despite  
 ongoing discovery issues  
 with Blanchard.

Boyajian Decl.  
 ¶ 3.

10  
 11 Dated: April 17, 2017

Respectfully submitted,

**ZUBER LAWLER & DEL DUCA LLP**

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 16 By:

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